

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
04-07-2024 AT 10:30 AM**

CP(IB) No.645/7/HDB/2018

AND

IA (IBC) (Plan) 11/2024 in CP(IB) No.645/7/HDB/2018

u/s. 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India
(Stressed Assets Management Branch)

...Financial Creditor

AND

M/s. Vibha Agro Tech Limited

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA (IBC) (Plan) 11/2024

Passed over for orders, as Learned Senior Counsel Shri D V Seetharam Murthy, had appeared through Video Conference and Learned Senior Counsel Shri T K Bhaskar, present physically and mentioned that the urgent applications under e-filing Nos 02180/2024, 02181/2024, 02182/2024 & 02183/2024 have been filed and prayed that the matter be taken up today as the application to approve the resolution plan is listed today for orders. Considering the submissions matter is passed over to hear on the urgency applications.

Order on un numbered urgent applications.

1. These applications are filed by the suspended director of the Corporate Debtor seeking urgent listing of un numbered Interlocutory Applications filed under e-filing Nos 02180/2024, 02181/2024, 02182/2024 & 02183/2024, one of such application being to reverse the claims to the extent of penal charges claim of State Bank of India (SBI) and to reconstitute the CoC on the basis of fresh voting percentages of the members of the CoC.
2. According to the Applicant the urgency for listing the above IA is on account of the fact that, this Tribunal has heard the Application filed by the Resolution Professional (RP) seeking approval of the Resolution Plan which was voted by the CoC, and posted the same for orders today and pending hearing the above IA, if orders are pronounced in the plan approval application, irreparable loss and injury would be caused to the applicant.
3. Learned Senior Counsel for the Resolution Professional who is present during the hearing of this Application, strongly objected for allowing this Application, contending, *inter alia*, that the applicant despite being fully aware of the all the stages and steps in the CIR Process of the corporate debtor taken so far by the CoC, including filing of the application by the RP seeking approval of the resolution plan and posting the said application for orders, by contending falsely that only on 14.06.2024 the applicant came to know about posting the Application filed by the Resolution Professional (RP) seeking approval of the Resolution Plan for orders filed the present application. Hence, this application is liable to be dismissed. Ld. Counsel for SBI also opposed the application contending similarly.

4. Since this application is contested strongly, we have heard the Learned Senior Counsels Mr.D.V.Seetharam Murthy and Mr.T.K.Bhaskar for the Applicant, Learned Senior Counsel Mr.Challa Dhanunjay for the RP and Mr.G.P.Yash Vardhan for the SBI.
5. At the outset, we wish to state that this being an application for urgent listing of the un numbered IA filed *inter-alia*, seeking reconstitution of the CoC, we are required to find whether or not the urgency as pleaded by the Applicant really exists and also whether the Applicant had approached this Tribunal *belatedly*.
6. Learned Senior Counsel submits that vide IA.No.1092/2023 filed by the RP, alleging non-co-operation by the members of the suspended board the RP sought certain directions against the members of the suspended board, and this Tribunal on 18.05.2024 ordered notice to the Respondents returnable by 18.06.2024. However, on the representation made by the RP that the CoC has voted the resolution plan on 24.05.2024 with requisite majority, this Tribunal after recording the said submission dismissed the IA.No.1092/2023 as infructuous, and also heard the RP in IA.No.11/2024, however without notice to the applicant and posted the same for orders to 19.06.2024.
7. According to the Learned Senior Counsel the Applicant was unaware of the dismissal of IA.No.1092/2023 until 14.06.2024 as they have no notice of dismissal of the said application by advancing the matter. Hence, immediately filed necessary applications on 19.06.2024 and the same was also mentioned on 19.06.2024 by the Sr Advocate when the matter came up for orders. Ld. Sr. Counsel prayed that the Tribunal may accept this application hear and dispose of the applications already filed and pending hearing of the application defer passing orders in the plan approval application.

8. *Per Contra*, the Learned Senior Counsel for the RP submits that the Applicant is fully aware of all the decisions taken in the CoC meetings ever since the first meeting wherein the CoC has been constituted and later informed to this Tribunal and at no stage raised any objection as regards the constitution of the COC. Next, Learned Senior Counsel contended that the Applicant was also fully aware of voting on the resolution plan with requisite majority by 24.05.2024 itself, besides filing of the application by RP for approval of the resolution plan much prior to 14.06.2024. However, by keeping silent all through, suddenly on the date of fixed for passing orders had come up with this application pleading unfounded urgency. Therefore, the application being belated besides devoid of any bona fides, is liable to be dismissed.
9. Learned Counsel Mr.G.P.Yash Vardhan for the SBI sailed with the submissions made by Senior Counsel for the RP and contended that the applicant having participated in all the CoC meetings cannot plead ignorance of proceedings in the CoC meetings.
10. Having heard the Learned Counsels for both sides, it is to be stated that since the applicant being a member of the suspended board and having been admittedly allowed to be present in all the meetings of CoC, more so in the first and the CoC meetings dated 24.05.2024, cannot be allowed to plead ignorance of the CIR process that has so far undergone. However, we do find force in the submission of the Senior Counsel for the applicant, the cause of action for filing the unnumbered IA in e filing no.3607130/02133/2024 has arisen only upon the RP filing the application seeking approval of the resolution plan, besides the plea that the applicant within few days of filing the said application by RP had approached this Tribunal. We further wish to

state that the delay if any by itself cannot be a ground to deny the relief to a party, if the party is otherwise entitled to, when such delay is not willful.

11. We therefore allow this urgent application and direct the registry to number the applications filed by the applicant within 2 days from today if the same is otherwise in order. In the event, objections if any remain uncured the same shall be cured by tomorrow, in default the urgent application stands dismissed. No costs.

IA (IBC) (Plan) 11/2024

As IA's with e-filing Nos 02180/2024, 02181/2024, 02182/2024 & 02183/2024, are pending, orders deferred till 19.07.2024.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Sridher